

Fernando Oblitas-Rios v. Pfizer, Inc.
U.S. District Court (Southern) Case No. 06-CV-2679 (BTM)
Exhibit Index for Notice of Lodgment of Exhibits in Support of
Pfizer's Motion to Transfer Venue

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EXHIBITS "3" through "4"

Exhibit 3: Transcript from oral argument before Judge Hellerstein in the *Coultrip* case on
February 28, 2007

Exhibit 4: Joint Proposed Discovery Plan and Briefing Scheduling Regarding Plaintiffs' Motion
To Certify The State Law Class, approved by Judge Hellerstein in the *Coultrip* case
on April 20, 2007

EXHIBIT 3

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 ANTHONY COULTRIP, et al.,

4 Plaintiffs,

5 v.

06-CV-9952 (AKH)

6 PFIZER, INC.,

7 Defendant.

8 -----X
9 New York, N.Y.
February 28, 2007
10 9:57 a.m.

11 Before:

12 HON. ALVIN K. HELLERSTEIN,

13 District Judge

14 APPEARANCES

15 SPIRO MOSS BARNES
Attorneys for Plaintiffs
16 BY: IRA SPIRO, ESQ.

17 JOSEPH & HERZFELD, LLP
Attorneys for Plaintiffs
18 BY: CHARLES JOSEPH, ESQ.
MICHAEL PALMER, ESQ.
19 MAIMON KIRSCHERBAUM, ESQ.

20 LITTLER MENDELSON
Attorneys for Defendant
21 BY: JAMES BOUDREAU, ESQ.
A. MICHAEL WEBER, ESQ.
22 LEE SCHRETER, ESQ.

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20 Attorneys for Defendant

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A. MICHAEL WEBER, ESQ.

LEE SCHRETER, ESQ.

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1 (In open court)

2 (Case called)

3 THE CLERK: Would the attorneys please state your name
4 for the record.

5 MR. JOSEPH: Charles Joseph, Joseph & Herzfeld, for
6 the plaintiffs.

7 MR. SPIRO: Ira Spiro, S-P-I-R-O, Spiro Moss Barnes,
8 for the plaintiffs.

9 MR. PALMER: Michael Palmer, Joseph & Herzfeld, for
10 the plaintiffs.

11 MR. KIRSCHERBAUM: Maimon Kirscherbaum of Joseph &
12 Herzfeld for the plaintiffs.

13 MR. BOUDREAU: Jim Boudreau, Littler Mendelson, for
14 the defendant Pfizer, Inc.

15 THE COURT: I didn't get your name, sir.

16 MR. BOUDREAU: Jim Boudreau.

17 THE COURT: Yes.

18 MR. WEBER: Michael Weber, Littler Mendelson.

19 MS. SCHRETER: Lee Schreter, your Honor, Littler
20 Mendelson.

21 THE COURT: Everybody can be seated.
22 Of this large group, who's going to argue?

23 MR. SPIRO: I am for the plaintiffs, your Honor.

24 THE COURT: So you are Mr. Spiro?

25 MR. SPIRO: Spiro, yes.

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1 MR. BOUDREAU: And I, Mr. Boudreau, will be the
2 principal, your Honor.

3 THE COURT: Mr. Boudreau.

4 MR. SPIRO: I understand that only one of us should
5 argue. Am I right about that?

6 THE COURT: Yes.

7 MR. JOSEPH: Your Honor, after the argument there are
8 some other issues I'd like to bring up, if that's okay.

9 THE COURT: Sure.

10 This is a motion to strike the class allegations of
11 the complaint. And the motion is brought by Mr. Boudreau. So
12 let me look at the complaint, Mr. Boudreau, and focus me on the
13 allegations you wish me to strike.

14 MR. BOUDREAU: Your Honor, it is essentially all of
15 the class -- the Rule 23 state law class allegations.

16 THE COURT: What are the numbers?

17 MR. BOUDREAU: They are contained in paragraphs 24
18 through 55, your Honor. And then to the extent the wherefore
19 clause obviously contains prayers for classwide relief, under
20 Rule 23 for that as well, your Honor.

21 THE COURT: On a motion to strike or motion to dismiss
22 brought under Rule 12(b), I have to accept the allegations of
23 the complaint as if proved.

24 MR. BOUDREAU: That's 12(b), your Honor, but the
25 motion is also brought under Rule 23(d).

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1 THE COURT: What in 23(d) gives me the ability to go
2 beyond the allegations?

3 MR. BOUDREAU: Your Honor, I don't think that
4 necessarily you need to go beyond the allegations, nor am I
5 asking you to. I think 23(d) does give you that flexibility if
6 you so choose. 23(d) literally says that the Court has
7 flexibility in the management of the action, to focus the
8 attention needed to conduct the litigation, without --

9 THE COURT: Mr. Boudreau, if you want to read
10 something, it must be done slowly so the reporter can get it
11 and I can listen to you.

12 MR. BOUDREAU: Rule 23(d)(4), your Honor, expressly
13 authorizes a court to order that the pleadings be amended to
14 eliminate therefrom allegations as to representation of absent
15 persons and the action proceed accordingly.

16 THE COURT: And under this section how do I deal with
17 well-pleaded allegations that set out a proper cause of action?

18 MR. BOUDREAU: Your Honor, it's not a motion to
19 dismiss a well-pleaded cause of action; it is a motion to
20 dismiss the Rule 23 allegations.

21 THE COURT: Well, let's get to the specifics. Give me
22 the first allegation you want me to strike.

23 MR. BOUDREAU: Again, your Honor, if we go to the
24 class allegations of the complaint, which are broken out in the
25 paragraphs I cited previously --

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1 THE COURT: Well, I'm starting with 24. You tell me
2 what it is you want me to strike. Let's go to the first clause
3 that you regard as substantive.

4 MR. BOUDREAU: It's paragraph 24, your Honor, and
5 frankly, the whole allegation, is that plaintiff Albarran
6 brings the California claims for relief pursuant to the Federal
7 Rules of Civil Procedure Rule 23, on behalf of all persons who
8 were, are or will be employed by defendants on or after the
9 date that is four years before the filing of the complaint.

10 THE COURT: So this is much too broad because it
11 doesn't signify the particular people in the class.

12 MR. BOUDREAU: Your Honor, it is -- that would be one
13 aspect of it. But that the Rule 23 allegations fail to state a
14 viable claim under Rule 23 --

15 THE COURT: You've got two points here. One is that
16 it is inconsistent to have a class, an opt-in class under the
17 Fair Labor Standards Act and an opt-out class under state law.
18 I held in *Ansoumana* that that wasn't so, and I have not thought
19 anything since that case that would cause me to depart from
20 that ruling as a matter of theoretical exercise. However,
21 *Ansoumana* was based on a different set of employees in a
22 different locale from the set of employees and the several
23 locales that apply to this particular case. So there's nothing
24 in paragraph 24 except its excessive breadth that lets me focus
25 on that distinction. Insofar as you're making an argument that

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1 theoretically there cannot be a coexistence of the two kinds of
2 classes, I reject it. And I rule as I did in *Ansoumana* that in
3 an appropriate case, you can have a coexistence. But I stress,
4 in *Ansoumana* there was a more limited class operating in
5 particular supermarket locales in the city of New York and
6 particularly in Manhattan in the city of New York, a particular
7 type of employee, rather fungible, because all they were doing
8 was delivery services and incidental other services in the
9 supermarket or drugstore and it was a class that was easily
10 manageable and I could make sure that nothing in the opt-out
11 class under New York State law would bury the remedies or
12 detract from the remedies of the opt-in people under the Fair
13 Labor Standards Act. All the actions under the state law did
14 in that case was somewhat enlarge the scope of action because
15 the statute of limitations in New York was a little more
16 liberal than it was under federal law. That may not be true
17 here, but my focus is now on the pleadings and I want you to go
18 through the pleadings and focus me on specific allegations that
19 you think are not cognizable by the Court dealing with the Fair
20 Labor Standards Act case.

21 MR. BOUDREAU: Your Honor, I mean, I could go through
22 all 40 --

23 THE COURT: That's what I want you to do.

24 MR. BOUDREAU: -- some odd allegations.

25 THE COURT: That's what I want you to do.

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1 MR. BOUDREAU: Well, again, your Honor, but again,
2 this ties back to the argument that you're telling me you
3 reject and --

4 THE COURT: Well, I reject it. So now you've lost
5 that argument. What's your other position?

6 MR. BOUDREAU: Well, there's two fallback arguments,
7 your Honor. The first being that on the face of the complaint
8 they cannot satisfy the standards under Rule 23.

9 THE COURT: Okay. I'll hear that. What's the other
10 point?

11 MR. BOUDREAU: And the second point, your Honor, is,
12 irrespective of Rule 23, that the Court should exercise its
13 discretion under 1367 and refuse or deny supplemental
14 jurisdiction of the state law claims.

15 THE COURT: That's very hard to do on a motion to
16 dismiss.

17 MR. BOUDREAU: Your Honor, it's been done, and it's
18 been done rather frequently and more increasingly in the last
19 year. There's a litany of cases, and I think it's particularly
20 appropriate in this case --

21 THE COURT: The law in the Second Circuit is very
22 deferential to pleadings. This is still a circuit where former
23 professor and dean and later judge Charles Clark developed a
24 sustainable presence with regard to the rule to plead. Lots of
25 district judges have tried to exercise control over a case by

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1 creating tight standards under the pleadings and they've
2 failed. They've failed in the trust area, they've failed in
3 the securities area, they've failed in other areas as well,
4 including some efforts of my own. So I'm not about to do that.

5 MR. BOUDREAU: Well, your Honor, I would say within
6 the Second Circuit that trend is changing a little bit in this
7 past year with the --

8 THE COURT: Maybe.

9 MR. BOUDREAU: The fact of the matter here is, your
10 Honor, that this is unlike any other case that the plaintiffs
11 cite or that, frankly, we've been able to find either in the
12 Southern District of New York or anywhere else.

13 THE COURT: I agree with you, but I still have to deal
14 with pleadings, so I want you to take me through the pleadings
15 and point out specific allegations that, given what I've just
16 said, you think can be stricken.

17 MR. BOUDREAU: Well, your Honor, if we start with
18 paragraph 24, we went through it. If we go to paragraph 25,
19 your Honor, the proposed class that the California plaintiff
20 seeks to represent is defined as all persons who have been, are
21 or in the future will be employed in California by defendants
22 in any of the covered positions.

23 THE COURT: So what are the covered positions?

24 MR. BOUDREAU: There are seven covered positions, your
25 Honor.

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1 THE COURT: Where do I find them?

2 MR. BOUDREAU: They're delineated at paragraph 2 of
3 the complaint.

4 THE COURT: Okay. Now does plaintiff make allegations
5 that adequately bring these seven categories into the criteria
6 of Rule 23?

7 MR. BOUDREAU: Well, I would say, your Honor, what
8 they say is they're all salespeople performing similar jobs.
9 But what we have now is seven different job titles in a minimum
10 of four different states. Indeed, they've already signaled the
11 intent to amend the complaint again to add other state law
12 claims.

13 THE COURT: Do we have any idea of how many people are
14 involved?

15 MR. BOUDREAU: In the lawsuit?

16 THE COURT: If nobody should opt out, how many people
17 would be involved?

18 MR. BOUDREAU: Well over 10,000, your Honor.

19 THE COURT: In four states.

20 MR. BOUDREAU: Well, they've already --

21 THE COURT: Functioning in seven different categories.

22 MR. BOUDREAU: Seven different job categories,
23 currently four different states, and dealing with, on the face
24 of --

25 THE COURT: I suppose that would make my findings with

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1 regard to state law in the four states, there would be a
2 disparity between those four states and every other state in
3 which Pfizer operates, which might not be consistent with the
4 Fair Labor Standards Act.

5 MR. BOUDREAU: That is true, your Honor. That is
6 certainly a possibility. And you know, your Honor, the thing
7 about the four separate claims is, keep in mind, this is an
8 exemption case. These are exempt employees who claim that they
9 are not properly exempt. State law on the exemptions differs.
10 This is not a, say, an off-the-clock case, where nonexempt
11 employees are all -- they're all being paid hourly rates and
12 aren't being paid a proper overtime rate. It is -- and the
13 test for exemptions, for example, in California are
14 dramatically different than under the Fair Labor Standards Act.
15 There are peculiar -- there's a Pennsylvania state law claim --

16 THE COURT: You're saying it could be different among
17 the four states and they're likely to be different with the
18 federal standards.

19 MR. BOUDREAU: That's exactly right, your Honor, you
20 know, and -- So obviously you've got the issues of statutes of
21 limitations differing, you've got the calculation of --

22 THE COURT: Do we know that or --

23 MR. BOUDREAU: Statute in New York is six years, for
24 example, your Honor, Wisconsin is two years, Pennsylvania is
25 three years, the federal act is two years, or three, in the

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1 event of willfulness.

2 In addition, your Honor, you've got different remedial
3 provisions. That is how you calculate penalties, to the extent
4 they exist. In New York you can't have a Rule 23 class that
5 has a penalty provision in it. So presumably when they add the
6 New York case that they've said they're going to add, they'll
7 waive liquidated damages. Yet there are liquidated damages
8 provisions in Pennsylvania law, in Wisconsin law, and they're
9 different than the Fair Labor Standards Act.

10 So in addition to that, you then fall back, your
11 Honor, to the ultimate issue of, take away the remedial
12 provisions and the procedural issues, statute of limitations,
13 but you have again the dramatically different exemption
14 requirements. I mean, the test for an exempt employee in
15 California is dramatically different than the federal standard.

16 THE COURT: You covered that already.

17 MR. BOUDREAU: Right. And so the other aspect, your
18 Honor, is that because it's an exemption case, you're looking
19 at the need to conduct individualized inquiries into each of
20 these seven positions because theoretically, and it's entirely
21 possible, there are going to be multiple exemptions that apply
22 to some or all of these different job categories. There's
23 three on the face of the complaint.

24 THE COURT: Is it alleged how these different
25 categories work, whether they're out of the home, whether

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1 they're in different plants of the company?

2 MR. BOUDREAU: They work out of their home, your
3 Honor. It is alleged that they work out of their home.

4 THE COURT: That's the allegation in the complaint?

5 MR. BOUDREAU: I'll leave it to the plaintiffs to
6 articulate it, but I believe that's the case, your Honor. I'm
7 looking for it.

8 THE COURT: It's likely that some work out of the home
9 and some work through a company office.

10 MR. BOUDREAU: Reporting to a company office, your
11 Honor. There's a regional office structure. But again, the
12 job duties amongst the seven are --

13 THE COURT: Vastly different.

14 MR. BOUDREAU: -- are different in terms of how they
15 sell the product or particularly what type of products you
16 sell.

17 And keep in mind, your Honor, when it comes to this
18 exemption issue, many states now are increasingly regulating
19 the sale of pharmaceutical products on their own. For example,
20 Maine has its own statute, you know, sort of a mini FDA, if you
21 will, in terms of what can or cannot be said or how drugs can
22 be sold within the state. So a salesman in Maine is going to
23 have a very different job, frankly, than one in New York that's
24 not regulated.

25 So that's going to be the case for each and every one

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1 of these jobs, and it's entirely possible that one sales rep in
2 Ohio could be exempt and a sales rep in Maine could be
3 determined to be nonexempt because that issue of exemption
4 status is a highly individualized inquiry and is dependent on
5 what job responsibilities the individual performs, and that is
6 what that individual in fact performs, not what some job
7 description says or what they're supposed to do.

8 So ultimately, your Honor, in the event of a Rule 23
9 certification, you know, where you have an opt-out class that
10 the plaintiffs admit is going to dwarf the opt-in class, at
11 least they claim it's going to, I mean, you're going to be
12 embroiled in a state-by-state factual basis, one, learning
13 state law on an individualized basis, and then two, applying
14 the particular -- particulars of those state laws to each
15 individual.

16 And you know, the federal Fair Labor Standards Act has
17 a highly compensated exemption. You know, if you're over a
18 hundred thousand dollars a year, certain -- you can meet an
19 exemption under the standards, gets a little easier, there's a
20 way around it. That's not going to be the case in every state.
21 And ultimately what you're going to end up with, your Honor, is
22 I think what many of the cases that decline supplemental
23 jurisdiction talk about and that is the state law claims sort
24 of wagging the federal tail, if you will.

25 And it ultimately brings me back to this issue, your

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1 Honor, and I know you rejected this argument, but I'm concerned
2 about the inherent incompatibility --

3 THE COURT: Well, I didn't reject inherent
4 incompatibility as applied to these particular facts. I reject
5 the argument in theory. I found in *Ansoumana* that I needn't
6 reject the theory there because there was essential harmony.
7 That may not be the case here for all the reasons that you set
8 out.

9 MR. BOUDREAU: And your Honor, if I could explain,
10 because I think your *Ansoumana* decision actually supports the
11 argument that we're making. And it's the federal Fair Labor
12 Standards Act 216(b) specifically says that no individual's
13 FLSA's rights can be adjudicated unless the individual
14 expressly consents in writing to join the action.

15 THE COURT: Right. Correct.

16 MR. BOUDREAU: If you allow a Rule 23 opt-out class,
17 you're going to have state law claims which are parallel to the
18 federal claims, and this is why I think *Ansoumana* somewhat
19 supports this point, your Honor. You in *Ansoumana* said,
20 indeed, it would be difficult to try them separately for the
21 findings in one case would tend to be preclusive as to the
22 other. And so what would happen is, an absent class member --
23 let's take a California plaintiff -- or maybe California
24 wouldn't be the best. Let's take a Pennsylvania plaintiff,
25 where the exceptions are the same. A Pennsylvania plaintiff

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1 who does not opt into the case, so he's not a member of the
2 216(b) class but is a member of the Rule 23 class, when the
3 Rule 23 judgment comes down, his claim will be adjudicated.
4 The issue of preclusion, that result, that Rule 23 judgment,
5 will preclude him effectively from ever relitigating under
6 216(b).

7 THE COURT: I don't accept the argument, for the same
8 reason I don't accept the previous argument. In *Ansoumana*,
9 because of the very close harmony in the two situations of the
10 state cause, that cause of action and the federal cause of
11 action, I held the way I did. But given four different states,
12 possibly five, with the proposed amendment, and federal law,
13 and covering totally different kinds of employees, different
14 range of situations, the problem is not preclusive effect on
15 judgment, the problem is manageability. In order to avoid the
16 problem of collateral estoppel the way you mention it, it
17 becomes very important for the judge to rule in very distinct
18 fashion what rulings are made under federal law and what
19 rulings are made under state law. That makes this kind of
20 cause of action extremely difficult to manage. It's on that
21 basis that I see the distinction, not the basis that you
22 mentioned.

23 I'd like to ask you this question: If I don't make
24 this ruling now because of the hesitancy I expressed earlier,
25 when is the next time I can make this ruling when there's a

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1 motion for class certification?

2 MR. BOUDREAU: I would expect when there is a motion
3 for class certification, your Honor, I will assume that that
4 motion would have to be under Rule 23.

5 THE COURT: And in the meantime, there would be
6 discovery, which would bring out many of the points that you're
7 bringing up now.

8 MR. BOUDREAU: That's possible, your Honor, but bear
9 in mind, when we were at the scheduling conference before, it
10 was the plaintiff's intent to file a motion for conditional
11 certification under 216(b) right away --

12 THE COURT: Well, I wouldn't grant it.

13 MR. BOUDREAU: -- and then wait --

14 THE COURT: I wouldn't grant it if there was this
15 uncertainty because it just makes things too complex.

16 All right. Let me hear from Mr. Spiro.

17 MR. SPIRO: I'm not sure which to address first, your
18 Honor.

19 THE COURT: Well, you choose, Mr. Spiro. That's one
20 of the privileges counsel has.

21 MR. SPIRO: Thank you. I think, well, this motion is
22 a motion to dismiss, says so right in the beginning, and a
23 motion to strike combined, but what it's trying to do is
24 dismiss all of the state law causes of action, all the Rule 23
25 causes of action.

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1 THE COURT: So far as they're class alleged. They're
2 not motions to dismiss the actions of the individual plaintiffs
3 under state law as well as federal law.

4 MR. SPIRO: That's correct, as I understand the
5 motion. And the pleadings, there's nothing in the pleadings
6 that can justify the motion. Counsel for Pfizer then
7 adverted -- well, adverted to -- when the Court said what it
8 said about the general principle of Ansonumana, then counsel for
9 defendant said, well, what we're then talking about is failure
10 to meet the criteria of Rule 23, and I think it meant 23(b)(3)
11 in particular.

12 And supplemental jurisdiction is the second thing
13 counsel mentioned. Well, on the pleadings, in the pleadings,
14 there is nothing from which the Court can determine that
15 Rule 23(b) criteria are not satisfied.

16 THE COURT: What's the point of expressing hesitancy
17 and in not ruling now when at a time the Rule 23 motion for
18 certification is made, we would have to deal with the same
19 points at that time?

20 MR. SPIRO: Because --

21 THE COURT: What's to be gained?

22 MR. SPIRO: Well, the hesitancy in not ruling now?

23 THE COURT: Correct.

24 MR. SPIRO: Well --

25 THE COURT: Let's say I accept that argument and the

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1 hesitancy I expressed earlier and saying, on the face of the
2 complaint arguably Rule 23 is satisfied, I can't strike the
3 allegations on a Rule 12(b) motion. The answer was twofold:
4 one, as supplied by Mr. Boudreau, who said this is also a
5 motion under Rule 23(d) and pointing to this express language
6 of enabling the judge to deal with a complaint; and the second,
7 my own in saying I would have to deal with the same criteria
8 when a motion for certification were made under Rule 23.

9 The arguments that Mr. Boudreau makes are not
10 necessarily fact based. They are arguments based on reasonable
11 implications drawn from the pleadings themselves. So all of
12 the scope is wider than is usually the case under a Rule 12(b)
13 motion, given Rule 23(d) and the kinds of arguments that are
14 made. In the Court's own experience in dealing with these
15 kinds of allegations, I may be able to make those findings.

16 Frankly, I am disposed, Mr. Spiro, not to change my
17 mind from *Ansoumana* but to distinguish the fact pattern from
18 *Ansoumana* and to rule that the fact pattern presented in your
19 pleadings is much too complex and much too diverse and much too
20 difficult to manage to suggest an opt-out class would be
21 available.

22 MR. SPIRO: I understand, your Honor. Thank you.
23 That focuses me better.

24 This complaint alleges the state laws of only four
25 states. There is a case whose name I can't remember -- if

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1 somebody can give it to me -- in the Second Circuit here, it's
2 a district court case, in which an FLSA claim and the claims of
3 nine different states were certified. There is the case --

4 THE COURT: Who was the judge?

5 MR. SPIRO: I'll have to find it. Somebody help me
6 with it? Sorry. I don't have it. I'll find it in a moment.
7 There's also -- I'll find that. I can look at my notes.
8 Pardon me. My memory for names is not the best.

9 There's also the farmers litigation in -- well, it's
10 actually a multidistrict litigation in California, farmers
11 overtime class litigation, in which the judge there in the
12 District of Oregon certified a case under the FLSA and seven
13 different states. Going back to the specific complaint here --

14 THE COURT: So you have a district court decision in
15 Oregon and a district court decision in the Southern District
16 of New York. But there's a great deal of discretion that is
17 involved in certifying the Rule 23 class. And it may be that
18 those judges have much greater capability than I do.

19 MR. SPIRO: I understand, your Honor. To that I would
20 say this: What we're talking about here as far as Rule 23, I
21 think what the defendant is getting at is the predominance of
22 common issues.

23 THE COURT: I'm sorry?

24 MR. SPIRO: Predominance of common issues. In other
25 words, counsel's talking about, oh, we've got four states and

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1 then counsel, for some reason I can't -- well, that I disagree
2 with, I won't say I can't understand -- is talking about 50
3 states. There is no question about 50 states in this case.

4 THE COURT: I brought up the issue. I was worrying
5 that rulings in four states would possibly create a
6 discriminatory treatment as between those four and the 48
7 others, and in combination with the Fair Labor Standards Act,
8 it makes the problem more acute. This is not a simple pattern.
9 This is not a group of delivery employees or West African
10 employees who may or may not have valid immigration status in
11 this country working below wage for several supermarket chains
12 in the city and state of New York. These are people who earn a
13 lot more money than that working in various sales capacities in
14 different places, spread through different areas, supervised by
15 different offices, presenting much more complex problems. I
16 don't feel I can manage that. I don't feel the commonality of
17 issues predominates over the specific issues in each particular
18 office and perhaps with many different employees, some of whom
19 work out of their homes, some of them don't, some of them
20 report to offices on weekly bases, some -- I don't know these
21 things, but I know the variety of supervisory treatment in
22 American industry. There is something.

23 MR. SPIRO: The Court just said something that -- I
24 don't mean to challenge the Court's words back at it --

25 THE COURT: Don't worry, Mr. Spiro. You can freely

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1 challenge me.

2 MR. SPIRO: All right.

3 THE COURT: I only have wisdom when the Second Circuit
4 affirms me.

5 MR. SPIRO: That can't be true. There's always the
6 Supreme Court.

7 The Court said something that perked up my ears,
8 frankly. And the Court moved its hands up and said, these
9 things, I'm not sure, I don't know, but these things may be
10 true. Now that's why this motion shouldn't be ruled on and --
11 at least it shouldn't be granted at this stage in the
12 litigation.

13 THE COURT: But as I asked you before, what profit is
14 there to postpone the ruling and to stay your ability to
15 proceed under the Fair Labor Standards Act? Which I will do; I
16 will not let you go forward with the Fair Labor Standards Act
17 until I know what the situation is with the state law.

18 MR. SPIRO: Well, the profit is that there are four
19 valid claims for relief for four different states that should
20 not be dismissed on the basis of the pleadings here that the
21 Court can only know --

22 THE COURT: So answer my question. What profit is
23 there to postpone this issue to a Rule 11 certification, which
24 will come 30 days from now on much the same record?

25 MR. SPIRO: Well, there's two answers to that. There

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1 is no profit if the Court is -- if the Court denies the motion,
2 in other words, rules in plaintiff's favor. Because then the
3 state law claims for relief will go forward.

4 THE COURT: Well, given my belief as I've expressed
5 that this is not suitable for class action treatment on an
6 opt-out basis and the likelihood therefore being that I will
7 deny a motion for certification, what profit would there be?

8 MR. SPIRO: There's a great deal of profit. What will
9 happen then is that the -- well, here, let me make two points.
10 First of all, at the outset, the claims for relief, on the
11 Rule 23 claims for relief in four different states will be
12 gone. These people will not have their right in this Court, at
13 least, to vindicate their Rule 23 relief. And --

14 THE COURT: Not true. The particular plaintiffs will.

15 MR. SPIRO: That's true. The classes won't.

16 THE COURT: But those who opt in will.

17 MR. SPIRO: That's -- but not entirely, no, they
18 won't.

19 THE COURT: We don't actually know that. We don't
20 know what that rule will be. But I think, as I remember the
21 proceedings in Ansoumana, anyone who opts in becomes a party to
22 the action and the parties to the action have an ability to
23 have all their claims adjudicated. The likelihood is that they
24 would qualify under Section 1367 and so I would have to
25 adjudicate their claims not only under the Fair Labor Standards

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1 Act but the state claims well. I'm not sure of that. I don't
2 know if you thought about that, Mr. Boudreau.

3 MR. BOUDREAU: Yes, your Honor. You have discretion
4 to do exactly what you just said.

5 THE COURT: So what we're talking about is a more
6 manageable situation with specific plaintiffs who have opted in
7 than in the more elusive situation of those who have not opted
8 out.

9 MR. SPIRO: Well, your Honor, that seems far less
10 manageable. In other words, if we're talking about a --

11 THE COURT: Well, Mr. Spiro, I'm firm on that. If
12 there are named parties, it's more manageable. The
13 manageability difficulties come when you don't know really what
14 you have, and we would not know what we have in a class that
15 potentially is 10,000 in number.

16 MR. SPIRO: Well, your Honor, if I understand it, in a
17 class action, the manageability of -- in fact, the very
18 justification for a class action is that something like
19 exemption from the overtime laws can be determined for a large
20 number of people by ways, by expedited means that the Court can
21 fashion, that the Court has enormous discretion to fashion,
22 representative evidence and the like can be determined for
23 large numbers of people as compared to determining them person
24 by person by person. And that's the whole idea -- maybe not
25 the whole idea, but certainly a major idea of a class action.

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1 THE COURT: It depends on the people involved. It
2 depends what they do, depends how you work, depends how the law
3 is framed.

4 MR. SPIRO: Let me say this: There is right now --
5 well, let me go to the laws in question. There is nothing in
6 the pleadings that states or shows that the exemptions in the
7 four different states are in any significant or unmanageable
8 way different from the exemptions under the Fair Labor
9 Standards Act. I'm quite familiar with the California
10 exemptions, and there is only one significant difference, which
11 is that on some of the exemptions there is a time-based
12 component, in other words, if you're working 50 percent of your
13 time doing the nonexempt work, that is -- that happens in every
14 single California FLSA and Rule 23 class action. And the great
15 majority of the cases in California, one that even came down
16 this month, held that both could proceed together. Counsel
17 cited two or three cases from California from the Ninth Circuit
18 district courts that held to the contrary, but the large
19 majority of cases in the Ninth Circuit held that both can go
20 forward.

21 In any event, the point is that on the law, there's
22 nothing in the pleadings, and there can't be anything until
23 it's briefed for the Court, to show that the issues of law here
24 are something that's in any way difficult for the Court to
25 manage. And I believe that they are not. But I can't

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1 demonstrate that to you in the pleadings. And in fact
2 defendants, defendant in its motion and particularly in its
3 reply does not say anything specific about what is different
4 between the state law exemptions and the federal exemptions
5 except to mention, I believe it's four things: statute of
6 limitations -- I have them listed here somewhere.

7 THE COURT: Rule extension, different statute of
8 limitations, different remedial provisions, different job
9 responsibilities.

10 MR. SPIRO: Thank you. I appreciate that. And these
11 are conclusory remarks only, that the Court has nothing before
12 it to determine whether those differences actually do exist,
13 whether they are manageable or not manageable until the Court
14 could be briefed on what these differences are. Now
15 difference --

16 THE COURT: Supposing, Mr. Spiro, I would agree with
17 that. When can you make a Rule 23 certification motion? And
18 would it require discovery?

19 MR. SPIRO: It would re -- yes, it would require some
20 discovery, yes.

21 THE COURT: What discovery would you need?

22 MR. SPIRO: We would need discovery of -- boy, I
23 wasn't ready to address this. But I think I can tell at least
24 in a general way what discovery we would need. We would want
25 discovery basically for corporate representatives under Rule

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1 30(b)(6) to determine, actually to verify what we're told by
2 our clients, that the job is, although named differently, as
3 we've stated in our complaint, is the same throughout the
4 country, to verify that --

5 THE COURT: You mean the different covered persons
6 alleged in paragraph 2 are different names for the same thing?

7 MR. SPIRO: That's right. They're different names for
8 the same thing. The defendant classified all of them as
9 outside salespeople. They don't sell anything --

10 THE COURT: What person would you need to tell you
11 that?

12 MR. SPIRO: Whatever corporate representatives. In
13 other words, I do --

14 THE COURT: So we'd have discovery, we'd have
15 witnesses back and forth on what these titles mean?

16 MR. SPIRO: On what the titles mean and more
17 particularly the fact that what they do on their jobs is highly
18 regularized, extremely regularized in part because of something
19 that counsel for Pfizer mentioned, because of the FDA and
20 Pfizer needing very dearly to comply with FDA laws and
21 regulations in the promotion of its product. These people, our
22 clients, I will tell you, have said that, we act basically as
23 automats. It wasn't that way in many years past before
24 the --

25 THE COURT: All right. That would be relevant in

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1 relationship to a Rule 23 certification. What other types of
2 discovery would you need?

3 MR. SPIRO: We would need documentary discovery on the
4 company policies, and there are -- the company policies that
5 pertain --

6 THE COURT: Regulating overtime for such people?

7 MR. SPIRO: I wasn't getting at that. I was getting
8 at regulating how these people do their work, because there are
9 very strict company policies on this, even strict --

10 THE COURT: Same as we talked about before.

11 MR. SPIRO: Yes.

12 THE COURT: All right. Mr. Boudreau, one of the
13 benefits of deferring ruling until a motion for certification
14 is made is that the decision becomes immediately appealable
15 under Rule 23(f). I don't know if a ruling under 23(d)(4)
16 would be immediately appealable. And certainly a ruling that I
17 would make on the basis of a limited discovery record would
18 have more meaning than ruling on the pleadings. I do believe
19 that a ruling in your favor at this point might not stand
20 because of the sensitivity of the Second Circuit not to go
21 beyond the pleadings themselves. I do agree that there has
22 been slippage from this rule and the most recent decision in
23 the Second Circuit in the securities class action field, Judge
24 Scheindlin's case requiring much greater fact finding on the
25 part of the court in terms of the merits than we previously

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1 thought we would be allowed, marks the possibility of a
2 different trend. I feel, however, that there should be limited
3 discovery and a Rule 23 motion, and then I would make the
4 findings that I need to make either for or against class
5 certification.

6 In the meantime, the case would not proceed under the
7 Fair Labor Standards Act. I would stay it so that I would
8 create a parallelism to the greatest extent possible under both
9 federal and state law. I think that's my view now.

10 MR. BOUDREAU: Excuse me, your Honor?

11 THE COURT: I think that's my view now.

12 MR. BOUDREAU: Well, your Honor, I think I go back
13 to -- and I think you made this point, but I don't think the
14 landscape is going to change at all.

15 THE COURT: It may not. But it will be a surer ruling
16 on the landscape, a surer demarcation of the posts and fences
17 that mark off the landscape.

18 MR. BOUDREAU: And I can only say, your Honor, that
19 the trilogy, the Kodak trilogy of cases from the Western
20 District of New York dealt with this issue and went ahead and
21 did it on the 12(b) standard regardless. And I would also say,
22 your Honor, a case that came down --

23 THE COURT: Tell me about those cases.

24 MR. BOUDREAU: It was the same argument made, your
25 Honor. It was a multistate class action, and I think it was

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1 25 --

2 THE COURT: Who was the district judge?

3 MR. BOUDREAU: Off the top of my head, your Honor, I
4 don't know the judge, but I can tell you in a minute. Telesca.
5 And there were essentially three companion cases.

6 THE COURT: We won't have much trouble following Judge
7 Telesca.

8 MR. BOUDREAU: And it was 25 states.

9 THE COURT: And what did he hold?

10 MR. BOUDREAU: Supplemental jurisdiction grounds, your
11 Honor, that there was no way to manage it moving forward, it
12 was too big a mess. And --

13 THE COURT: He made those findings under Section 1367
14 and not under Rule 23?

15 MR. BOUDREAU: That's my understanding, your Honor.
16 And the thing there was, the plaintiffs argued, your Honor,
17 that the motion was premature because they needed more
18 discovery. And he basically says, look at 23(c)(1) because
19 23(c)(1) now promotes the speedy class resolution. Indeed,
20 many district courts have entered 90-day orders. I think
21 you've got to file for class certification within 90 days,
22 often prohibiting any significant real discovery to be made.

23 Now I would also say, your Honor, and just to make you
24 aware of this --

25 THE COURT: Well, it was always the rule that you had

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1 to make a motion quickly, but quickly is subject to a lot of
2 things.

3 MR. BOUDREAU: Exactly. As soon as practicable is
4 always used, and I still don't know if practicable is a word.
5 And again, many district courts have entered a rule now, 90
6 days. But regardless, he rejected the idea that further
7 discovery would do anything because he was dealing with 25
8 states, et cetera. And I think it's important here, your
9 Honor, to look at the complaint in this case because the class
10 definition applies to covered employees. Covered employees is
11 defined in the complaint to be all persons who have been, are
12 or in the future will be employed by any of the defendants in
13 any job whose title is or was referred to in any of the
14 following -- the seven job titles.

15 THE COURT: Mr. Boudreau, I would not have much
16 trouble diminishing that scope. But that wouldn't really get
17 to the heart of the problem. The parties have not briefed
18 Section 1367(c). 1367(c) provides that the district courts may
19 decline to exercise supplemental jurisdiction over a claim
20 under subsection (a) if the claim raises a novel or complex
21 issue of state law; the claim substantially predominates over
22 the claim or claims over which the district court has original
23 jurisdiction; in exceptional circumstances there are other
24 compelling reasons for declining jurisdiction. So the
25 subparagraphs (1), (2) and (4).

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1 MR. BOUDREAU: Your Honor --

2 THE COURT: The problem with ruling under 1367(c) is
3 that it pertains also to the individual supplemental claims.

4 MR. BOUDREAU: Correct.

5 THE COURT: And your focus is only on the class
6 claims. I don't really think that's a 1367 argument. Judge
7 Telesca may have found that. I don't think I'd go that way.

8 MR. BOUDREAU: I was going to say, the parties have
9 argued 1367, your Honor.

10 THE COURT: They have. I understand that. I retract
11 what I said. But as I say, I'm not content to make this a
12 ruling under Section 1367. I have to focus on Rule 23.

13 All right. I'm going to rule, folks, that the motion
14 is denied, with leave to renew in the context of a Rule 23
15 class certification.

16 I'm not ruling on the merits. I want to make that
17 very clear. Indeed, as I think my remarks can fairly be
18 understood, I am concerned that I will not be able to manage
19 the class claims in the opt-out classes under state law with
20 the opt-in classes under Title 29, the Fair Labor Standards
21 Act. There are important distinguishing considerations between
22 this case and the *Ansoumana* case. And I need to have those
23 developed and explored in limited discovery. It will more
24 focus the briefing than exists at this point in time.

25 So that's my ruling on the present motion. As I said

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1 before, the proceedings under the Fair Labor Standards Act
2 would be stayed until such time as I'm able to rule on the
3 certification issues under Rule 23.

4 Let us go off the record for a few minutes and discuss
5 what are the next steps, and we'll recap this on the record.
6 Well, we can stay on the record, actually. Let me discuss a
7 few points, and we'll see if we can do this on the record.

8 Mr. Spiro has discussed the elements of discovery that
9 he thinks he needs. Mr. Boudreau, do you have any ideas about
10 discovery that you might need?

11 MR. BOUDREAU: Well, yes, your Honor. We would want
12 to depose all the named plaintiffs.

13 THE COURT: Four?

14 MR. BOUDREAU: Five.

15 THE COURT: Five.

16 MR. BOUDREAU: And then there's additional four
17 opt-ins on top of that.

18 THE COURT: I don't know that you need to do all
19 those. I think three would be sufficient.

20 MR. BOUDREAU: Well, your Honor, I'm trying to capture
21 all the state law claims and there's -- the plaintiffs have
22 already --

23 THE COURT: Yes, but those are legal arguments,
24 they're not factual arguments. You may ask me for more if you
25 don't get enough information out of the three, but I'd like you

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1 to focus on three and then tell me if you need more.

2 MR. BOUDREAU: Do you mean four, your Honor?

3 THE COURT: Three.

4 MR. BOUDREAU: So we're down to three now.

5 THE COURT: Three out of five. Look, if you want to
6 take five, it's okay too. I'm not really going to hold you to
7 three. But the point I'm making is, I don't want this to be an
8 elaborate discovery program. I want it to be economic,
9 efficient, concise and leading to the motion where I can make
10 my decision and then both sides can try to appeal to the Court
11 of Appeals.

12 MR. BOUDREAU: The plaintiffs have recently --

13 THE COURT: Second Circuit has not spoken on this
14 issue.

15 MR. BOUDREAU: The plaintiffs have recently propounded
16 discovery, including a deposition notice, and I would assume
17 that that is aimed at the very issues you're talking about. So
18 I think there's already a written record on it.

19 THE COURT: Well, I think you ought to get together
20 and come up with a program and tender it to me to be so
21 ordered.

22 MR. BOUDREAU: Okay.

23 THE COURT: See if you can limit your scope. Work
24 with Mr. Spiro and Mr. Joseph and try to find out enough about
25 the plaintiffs from their informal discussions so you can get a

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1 spread of information without taking everybody. And I want
2 both sides to be efficient here. Why don't you meet and confer
3 about these issues and see if you can tender to me a discovery
4 plan only for the purpose of making the motion for
5 certification, including a briefing schedule on this motion for
6 certification. I would like to have all this done within 45
7 days. If you need more time, you'll ask me for more time, but
8 I make this point because I want it constricted. More
9 efficient as well.

10 MR. SPIRO: You meant all the discovery done within 45
11 days?

12 THE COURT: And the motion briefing as well. If you
13 can do it. You don't need 30 days to get all this discovery.
14 I mean, you don't need every single piece of paper in the
15 company. Class certifications can be revisited. But I think
16 it's important -- you want to get on with your case no matter
17 what, Mr. Spiro, and the delay is going to be built in by this
18 opt-out class, it's going to be significant no matter what we
19 do, so I'd like to try to keep it within bounds. There may be
20 an appeal. Rule 23(f) allows both sides to try to convince the
21 Court of Appeals to take an appeal on this issue. Experience
22 teaches that when you ask the Court of Appeals, it takes two
23 months to get an answer, maybe even longer. At this point they
24 are bogged down with a lot of cases.

25 So there's a built-in period of delay that is going to

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1 afflict this situation no matter what. The more I can create a
2 constricted period within which you can operate, the shorter
3 period of time for the delay. Because if you are right, there
4 are people who will have the remedy, and the longer they wait
5 for the remedy, the more difficult it will be.

6 There's not going to be any settlements within this
7 period of time, unless it's for the named plaintiffs only.
8 There will be no class settlement in this period.

9 Okay. Anything else I need to rule on?

10 MR. JOSEPH: In the event of any discovery disputes,
11 will they come before this Court, given the --

12 THE COURT: The procedure I have under Rule 2(e) of my
13 individual rules, that will give you an opportunity to give me
14 a joint letter, and if I can do it, I will give you 24-hour
15 turnaround on the ruling.

16 MR. SPIRO: There is one question I have, your Honor.

17 THE COURT: If you can't get together on a discovery
18 plan, you'll write me a joint letter which will append a
19 jointly proposed with alternatives order so I can see which
20 side is proposing which idea, and I'll create an order on the
21 basis of this procedure. This procedure cuts out sequential
22 letters. The problem with sequential letters is you never know
23 which is the last one. So there's one shot. And it also
24 promotes conferring about what you're doing, and in my
25 experience many disputes are resolved before they even reach

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1 me.

2 Okay. All right. Get together, create a discovery
3 plan for this, tender it to me with an order, and we'll go
4 forward.

5 MR. SPIRO: I have one question.

6 THE COURT: Yes.

7 MR. SPIRO: The Court said motion for class
8 certification within 45 days. But the Fair Labor Standards Act
9 case is not proceeding. Does this mean that we do not make a
10 motion under the *Hoffmann-La Roche* case for initial
11 certification and notice?

12 THE COURT: Yes, that you do not.

13 MR. SPIRO: We do not.

14 THE COURT: Right. Because I'm not going to have
15 several notices, there will be one notice. If you win on the
16 opt-out class, the notice for the opt-out class and the notice
17 for opt-in class will be the same. That's what I did in
18 *Ansoumana*, it worked; I will do the same here.

19 MR. SPIRO: Thank you.

20 MR. JOSEPH: Thank you.

21 THE COURT: There will be no proselytizing the class,
22 no conversations with potential class members about this
23 lawsuit. By either side.

24 MR. SPIRO: Well, I do have a question about that.
25 Well, I guess it's mutual.

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1 THE COURT: It's mutual because I have to see the
2 notice and regulate it. And without a notice, we'll not have
3 it. I can't prevent and I will not prevent the defendant from
4 ordinary job-related communications with people in the various
5 functions alleged in paragraph 2 of the complaint, but they
6 will refrain from any discussions having to do with this
7 lawsuit. If asked, the answer is, the judge did not allow me
8 to answer.

9 MR. JOSEPH: Your Honor, people call my office on a
10 fairly regular basis who are potential plaintiffs in this case.

11 THE COURT: The answer is, I'm not allowed to talk to
12 you, until the judge gives me permission.

13 MR. JOSEPH: And we currently have advertising
14 running.

15 THE COURT: It's not to be.

16 MR. JOSEPH: We should turn off the advertising?

17 THE COURT: Yes, sir. There are no communications.
18 If you want communications, you'll be outcommunicated.

19 MR. JOSEPH: I understand, your Honor. And just to be
20 clear, we have periodically issued press releases as the --

21 THE COURT: You will not issue press releases. You
22 will not communicate.

23 MR. JOSEPH: All right.

24 MR. SPIRO: In other words, not even publicly. I
25 understand.

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1 THE COURT: You will not communicate.

2 MR. JOSEPH: Your Honor, I'm sorry, one last question.

3 We have about 12 or 15 of these cases. Some are in California,
4 some are before four different judges. I assume then that
5 the --

6 THE COURT: Based on the same fact pattern?

7 MR. JOSEPH: Yes. But I assume then that this ruling
8 applies to no communication with Pfizer reps; therefore, I
9 would assume that any press release that does not mention
10 Pfizer would be okay.

11 THE COURT: Pfizer is in my court. The other cases
12 you talk about reflect other drug companies?

13 MR. JOSEPH: Correct, your Honor.

14 THE COURT: All right. I'm not dealing with those
15 drug companies.

16 MR. JOSEPH: The advertising is not directed towards
17 Pfizer in particular.

18 THE COURT: I'm not going to get into all the things
19 that you do. You've heard my rulings, you understand my
20 rulings. I don't think you want to come up here on a contempt
21 motion.

22 MR. JOSEPH: Thank you, your Honor.

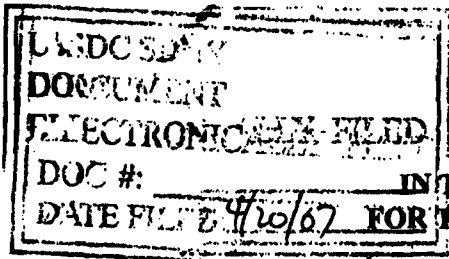
23 MR. SPIRO: You're quite right, your Honor.

24 THE COURT: Thank you.

25 MR. BOUDREAU: Thank you, your Honor.

o0o

EXHIBIT 4



So ordered
4-20-07
Alvin K. Hellerstein

ANTHONY COULTRIP, ROBERT
CHENAULT, DAVID HADLEY, DANA
HIGGS, and BENAIAS ALBARRAN, on
behalf of themselves and others similarly
situated,

Plaintiffs,

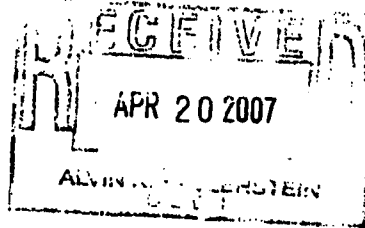
v.

PFIZER INC.,

Defendant.

Case No. 06-cv-09952-AKH

Judge Alvin K. Hellerstein



**JOINT PROPOSED DISCOVERY PLAN AND BRIEFING SCHEDULING REGARDING
PLAINTIFFS' MOTION TO CERTIFY THE STATE LAW CLASS**

Pursuant to this Court's February 28, 2007 instruction and its April 12, 2007 Order Denying Leave to Withdraw Class Allegations, the parties to this action jointly propose the following discovery plan, at the end of which Plaintiffs will file a motion for Rule 23 class certification of the state law claims in the case.

A. Written Discovery Directed at Class Certification

1. The parties have each served interrogatories and requests for production of documents. Plaintiffs served document requests on February 7, 2007, March 9, 2007 and April 17, 2007; interrogatories on February 7, 2007 (withdrawn in light of the Court's February 28, 2007 ruling) and April 17, 2007; plaintiffs served today a response and objection to Defendant's document requests as well as partial production). The parties agree that they will serve all further written responses to discovery on or before Monday, April 30, 2007. The parties will physically produce any remaining documents in response to the above discovery on or before Monday, May

7, 2007.

2. To the extent a party objects to any discovery request, the parties will meet and confer in an effort to resolve the dispute without court intervention. In the event the parties cannot reach agreement on the subject discovery dispute, the parties will submit any such dispute to the Court in accordance with its standing orders and practices. Any such disputes regarding class-based written discovery shall be jointly submitted to the Court on or before Friday, May 18, 2007.

3. On or before Friday, May 4, 2007, and consistent with the Federal Rules of Civil Procedure, the parties agree to meet in person and confer regarding electronic discovery and to establish a written electronic discovery plan. To the extent there are any disputes regarding electronic discovery that bear on class-based discovery, the parties will submit any such dispute to the Court in accordance with its standing orders and practices on or before Friday, May 30, 2007.

B. Depositions Directed at Class Certification

1. Plaintiffs shall complete the 30(b)(6) deposition session(s) of Defendant (noticed on February 7, 2007) in New York, NY on or before June 15, 2007. This deposition is to be focused on the duties and responsibilities of potential class members; training (including selling aids, role playing, scripts and the like; and corporate structure and divisions, and other matters relevant to defining the proper class).

2. Defendant shall depose the five named Plaintiffs on or before June 15, 2007.

3. Plaintiffs reserve the right to depose up to four regional and/or district sales managers in the relevant states. Whether depositions of these management employees will be

necessary is presently unknown. To the extent Plaintiffs eventually deem such depositions necessary, such depositions shall be completed on or before Friday, June 29, 2007. Such depositions shall take place at the witnesses' place of business or residence, unless Defendant deems New York, NY to be a more convenient location.

4. The parties recognize that the above plan may need to be altered depending on witness availability and whether witnesses have the knowledge they are designated to have under Rule 30(b)(6) as well as certain other factors. The parties agree that they will work together to resolve and/or minimize any disputes regarding such matters and will not involve the Court unless absolutely necessary. To that end, in the event the parties cannot reach agreement on a dispute concerning the above-reference depositions, the parties will jointly submit such dispute in writing to the Court on or before Friday, July 6, 2007.

5. In no event shall any of the discovery referenced in this Joint Discovery Plan and Briefing Schedule extend beyond July 13, 2007, unless agreed to by the parties or ordered by the Court.

C. Motion for Rule 23 Class Certification

1. Plaintiffs will file their Motion(s) for Rule 23 Class Certification on or before Friday, June 30, 2007.

2. Defendant will file its Opposition to Plaintiff's Rule 23 Motion on or before Wednesday, July 18, 2007.

3. Plaintiffs will file their papers in reply to Defendant's Opposition on or before Tuesday, July 31, 2007.

4. The Court will hold oral argument on the Motion on

date to be set.
2007

AM

Respectfully submitted,



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